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Human Rights and Policing in India- A Critical Views on Police Accountability

Chandrashekar S.V

Introduction

How could we imagine without Police department? Or just imagine police just closing up their Police Stations as other government offices by 5 in the evening? Yes, you could never imagine that Police Department is there for securing the society, to ensure safety among people, to rescue the citizen in emergency circumstances; its various branches are setup for the purpose law and order. The deliberation really is on discharging their duty. Let us have a discourse on Police functions in law and order situation where about restrain or control the people, they cannot act any sort of physical handling, even can't punish people because they are not having any powers as such. While restraining people from law abiding with necessary actions, police is blamed though that's part of duty. Even police could misuse the situation where forcibly or egoistically these conflicts are seen often in every police action. Citizen complaints alleging violations against police, other side police blame on human rights commission which never allows performing their duty. The National Human rights Commission of India has persuaded the state and Central Governance to implement with establishment of Human Rights Cell all over the Police Head-quarters which should be headed by a Senior Police officer. This shall work as internally investigating and to conduct an enquiry on the allegation filed against the police officers, Train the police in Human rights actions, Creating Sensitization among police, also commission has requested to establish District Complaint authorities at the district levels.

Police are public servants, Policing is public service!

India is a biggest democratic country, ensure democratic values. The governance and all the public institutions shall liable within the principles stated in the Fundamental law of the Land- the Constitution of India. Public Institutions shall provide the service to the people, Police department is such venture to Protect and maintain public order, respect each ones dignity and rights. Whenever the violations are reported against police that effects on Police image rescinds faith in Policing. Today technology has developed soon these kinds of information spreads through Social Media. Police accountability lies on these issues it's also pretty much of crucial factor of ethics in Policing. Accountability assessed with 2 kinds of analysis *firstly*, Police function in

community service, when community assents are at the best of their position, *Secondly* Police Public Relationship and coordination. In the recent times Police in India have started "Digital Policing" which predominantly emphasis on Citizen centric Services through online which is going to void interface between police, can register their complaints through said portal or online FIR registration.

Constitutional Provisions for Criminal Law in India- Human rights Perspective.

Some constitutional provisions for criminal laws in India ensures some rights to the citizen which falls under the Fundamental Rights of Citizen also in extension, they truly in the base of Human Rights too. The Article 21 to Article 24 defines,

Article 20, Protection in respect of conviction for offences- (1) No person shall be convicted of any offences except for the violation of law. (2) No person shall be prosecuted and punished for the same offence more than once (Doctrine of Double Jeopardy). (3) No person accused of any offence shall be compelled to be witness against himself (Doctrine of self-Incrimination)

Article 21: Protection of Life and Personal Liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22: Protection against arrest and detention in certain case- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest nor shall be denied the right to consult and to be defended by, legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest.

Article 23: Prohibition of Traffic in Human Beings and Forced Labor

Article 24: prohibition of employment of children in factories, etc...

Criminal Procedure Code provisions and Powers to the Police

Arrest

Actual deliberation on human rights issue starts with the police interaction while dealing with cases or the report which they get. The provisions of how arrest made is explained in the section 46 of CrPC, Say that if person forcibly resists the endeavor to arrest, or attempt to evade, Police can use all means of necessary to effect the arrest, here "all means" has explanation in very wide and taking of assistance from others in effecting the arrest. This condition throws the dilemma that raises the issue of human rights, and in section 49 of CrPC, No Unnecessary restraint to prevent his escape merely looks like an issue often comes to discussion. Person arrested is having right to Bail, and to get to know on what grounds he is made arrest, he can inform any of the family members or to inform the advocate of his choice to bring notice that is has been arrested. In section 54 of the same act, Examination of the arrested person has to be made by requesting him through the medical practitioner. Within 24 hours he has to produce before magistrate, failing this is the fundamental right violation has said in the constitution article 22(2). No one can be detained more than 24 hours without the orders of magistrate.

Maintenance of Public order and Tranquility

Maintenance of law and order is the prime objective of the Police department, when cases come across section 129 of CrPC, Dispersal of assembly by use of civil force when it amount to disturb public peace with unlawful gathering. To disperse they are allowed to use civil force by arresting, confining. This section 129 often have perspectives with constitutional article 19(1), confers upon all the citizen have right to assemble peacefully without arms. Even with the section 144 of CrPC.

Information and Investigation

Information and investigation shall proceed according to CrPC, more on the fact of the received information and shall carries with all the constitutional guarantees and Legal process. Courts can intervene at any point at this condition whenever the rights of individual are violated. Section 176 pf CrPC deals with Inquiry by the Magistrate into cause of death. When person dies while in the custody of Police, or when inquest is required. Because the custodial deaths are clear violation of Human rights since police are not the authority to sanction punishments or any torture to get confession in any sort of crimes, forcibly taking confession notes are abolished.

The following figures are number of cases registered by Human rights Commission of India in its Annual Report 2017-2018.

Number of cases registered

Financial Year	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018
Death in police Encounter	137	188	179	169	164
Custodial Death (Judicial)	1577	1588	1668	1616	1636
Custodial Death Police	140	130	151	145	148
Police	32968	34954	35533	27845	26391
Jail	2597	2583	2670	2447	2416

Source: NHRC, Annual Report 2017-2018.

The above table shows that the number of cases registered by Human rights commission from 2013- 2018, relating to violation by police. An average 160 cases reported every year on police encounters. It doesn't means that all ere fake in nature but genuine cases and the reasons for the encounter, Police shootings, are verified and investigated by the commission. The deaths in judicial custody (Jails) are report an average of 1500 per year all over India. May be the Suicidal, Homicidal, Health issues, Disease, Jail atrocities, Inmate Conflict are also should be taken into account. Custodial deaths in police station level are average 140 cases reported every year. Not merely police torture, some are may be due to lack of Hospital, Medicine in emergencies, Diseases, Age factors are also to be considered. Overall there were 26391 cases are reported relating to police violations all across the nation and in jails it is 2416 cases have been reported during the year 2017-2018 alone.

This above report is National Human Rights Commission (NHRC) during the period of April 1st, 2017 to March 31st 2018, 24th Annual Report Submitted by the commission to the central Government of India. The annual report of the commission is not merely provides information, but it comprises principal source of information. It also registers the 'suo motu' cases over the reports of media, as well as complaints they receive. The Police work will be watched by the human rights commission especially in the cases like using excessive force, Rape and Death in Police and Judicial Custody, Violation of Human rights of Prisoners in Jails, Illegal Detention and Torture, High Handedness of Police, Deaths in Police encounters are monitored and registered. It also sensitizes the human rights, Human rights literacy for the judicial officers, Police Personnel, Government officials in this regard.

The Investigation Division of Human Rights Commission

Spot Enquires: The investigation branch will look forwards to conduct spot enquires and also send a message to all the complainants, public servants. In the cases especially authorities in illegal detention, extra judicial killing, monitor the cases and gives report.

Custodial Deaths: it is supposed to intimate the cases of any death in custody within the 24 hours. Then the investigation team investigates the issues, takes forensic experts to analysis (they will be in panel). It is the state authorities responsibility to inform either state or national commission whenever there are cases on custodial death no matter whether police or judicial.

Directions of United Nations to the Police and Law enforcements

The United Nations hereby made some directions to respect the Human rights Importance in their duties.

1. Ethical and Legal conduct: officials shall respect Human dignity and Human rights, shall report laws codes and principles to promote the human rights with non-discrimination.
2. Obedience to superior orders shall not invoke to justify the human right violations in the form of unlawful killing and torture.
3. Ensuring police officials to understand the legal powers and legal rights of the people.
4. Police should protect the people without any sort of favor or fear
5. Speak against the ethnic or racial stereotyping or slurs in the community
6. Reward the police officer who has good terms with people relationships.
7. Community policing

In Investigations

1. Ensure that everyone has a right to security
2. Everyone has a right to fair trial
3. Everyone are presumed innocent until proven guilty
4. No one shall be subjected arbitrary interface with his or her family, privacy, home
5. No one shall be subjected to unlawful attacks on his or her honor, reputation,
6. No one shall be exerted pressure on subjects, witness, or Victims

7. Treat all the suspects as innocent persons, politely, respectfully and professionally.

Police versus Human Rights Commission- In conclusion

The strange thing is that we often forget even police are also having same Human rights. Largely the blames on either side will long lost towards justice. Two institutions are framed for the protection of rights and social interests. Ultimately law of the land decides the nature of an act of people. Often we read in the newspaper or in media human rights institutions blames police, so by the police blaming human rights institution for not allowing them to perform their duty. Police while discharging their duty its common to see in many a cases like physical handling, force in detention or in arresting person, Controlling mob, public tranquility issues. Human rights commission check whether the procedures are followed in these cases. Hence if the police officers follow the procedure it never affects any human rights violations since they are there to protect it. Negative image on the police department is because of their attitude towards public. So at the government level there many initiatives are taken in order to improve the police image to make police people friendly there plays human rights commission a significant role. Training in Human rights issue is common in all police training period for strengthening them to understand the importance of police in protection of human rights.

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